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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

B.F.R.A. INVESTMENT LLC, a California limited liability company,

Plaintiff,

v.

GETTY IMAGES, INC., a Delaware corporation, BAUER-GRIFFIN, LLC, a California limited liability company, and DOES 1-10, inclusive,

Defendants.

Case No.: CV15-08588-MWF-KS

FIRST AMENDED COMPLAINT FOR:

1. **COPYRIGHT INFRINGEMENT (17 U.S.C. § 501)**
2. **FALSIFICATION, REMOVAL AND ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION (17 U.S.C. § 1202)**

DEMAND FOR JURY TRIAL

Plaintiff, B.F.R.A. Investment LLC, complains against Defendant, Getty Images, Inc., a Delaware corporation, Bauer-Griffin, LLC, a California limited liability company, and DOES 1-10 (collectively, "Defendants") as follows:

JURISDICTION AND VENUE

1. This is a civil action against Defendants for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq*. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a) and (b).

2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the Defendants may be found and transact business in this Judicial District, and the injury suffered by Plaintiff took place in this Judicial District. Defendants are subject to the general and specific personal jurisdiction of this Court because of their contacts with the State of California.

PARTIES

3. Plaintiff B.F.R.A. Investment LLC ("BFRA") is a California limited liability company existing under the laws of California, with its principal place of business located in Pacific Palisades, California. BFRA is the successor-in-interest to X17, Inc. ("X17")—a California corporation existing under the laws of California, with its principal place of business located in Beverly Hills, California—as the owner of the copyrights to the works at issue in this suit.

4. On information and belief, Defendant Getty Images, Inc., ("Getty") is incorporated and existing under the laws of Delaware, with its principle place of business in Seattle, Washington.

5. On information and belief, Defendant Bauer-Griffin, LLC ("Bauer-Griffin) is a California limited liability company existing under the laws of California, with its principal place of business in Los Angeles, California.

6. The true names or capacities, whether individual, corporate or otherwise, of the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of

Court to amend this Complaint and insert the true names and capacities of said Defendants when the same have been ascertained.

FACTS COMMON TO ALL COUNTS

X17 and the Photographs that Frame This Dispute

7. Since at least 2001, X17 has owned and operated one of the world's leading archives of celebrity-related photographs and has held all intellectual property rights, including copyrights, thereto.

7. For valuable consideration, X17 has licensed the rights to reproduce its copyrighted works in copies, distribute copies of its copyrighted worked, and publically display copies of its copyrighted works, or derivative versions thereof, to hundreds of magazines, newspapers, television stations and other prominent media outlets throughout the world.

8. X17 is renowned for its timely photographs covering breaking news events and its images of leading celebrity stories of the day. Media outlets seeking to scoop the competition and provide their viewers with the most vivid depictions of celebrity-related news stories consistently rely on licensing arrangements with X17 for the use of X17's copyrighted photographs.

9. Among many other in-demand photographs, X17 owned coveted photographs of well-known celebrities such as Kim Kardashian, Kourtney Kardashian, Kylie Jenner, Taylor Swift, Justin Bieber, Reese Witherspoon, and Leanne Rimes (herein referred to as "Celebrity Photographs"), among many others. All rights, title and interest in the Celebrity Photographs (the photographs at issue in this case), including but not limited to the copyrights thereon, have been assigned and transferred in full by X17 to Plaintiff BFRA. Plaintiff BFRA is therefore X17's successor-in-interest to all rights, title and interest in the photographs at issue in this case, including but not limited to the copyrights thereon. Any references to BFRA's rights herein incorporate and are coterminous with those of its predecessor-in-interest, X17.

10. The Celebrity Photographs are all timely registered with the United States Copyright Office. (Ex. A.)

Defendants and Their Willful Infringing Activity

11. Defendant Getty is one of the most well-known publishers of celebrity images. Getty's website describes it as "among the world's leading creators and distributors of award-winning still imagery, video, music and multimedia products…With its advanced search and image recognition technology, Getty Images serves business customers in more than 100 countries and is the first place creative and media professionals turn to discover, purchase and manage images." As a sophisticated publisher, it depends on copyright laws to support its prosperous business model.

12. Defendant Bauer-Griffin is a photography agency that licenses celebrity photographs to media outlets.

13. Getty makes money by issuing licenses for its "instantly recognizable, powerful and evocative – [photographs] of famous people." Magazines or websites looking to license photographs of celebrities can easily do so through the Getty Images website (www.gettyimages.com) ("The Getty Images Website"). Getty represents to its customers that it owns the requisite rights to issue legitimate licenses.

14. Getty and Bauer-Griffin have, on information and belief, violated federal law by willfully infringing BFRA's copyrights to at least 12 photographs on the Getty Images Website. Attached hereto as Exhibit B is a true and correct copy of screenshots showing use of the Celebrity Photographs on the website.

15. Specifically, on information and belief, Bauer-Griffin issued a sham assignment or license to Getty for the rights to the Celebrity Photographs. Thereafter, Bauer-Griffin, via Getty, offered the Celebrity Photographs for license to third parties. Defendants have reproduced, distributed, and publically displayed at least 12 Celebrity Photographs, and derivatives thereof, on Getty's website without permission, consent, or license. The Getty Image identification number and link to the infringing photographs are as follows:

- Image number 477370204- "Celebrity Sightings in Los Angeles – June 16, 2015," Kourtney Kardashian [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/kourtney-kardashian-is-seen-in-hollywood-on-june-16-2015-in-news-photo/477370204)

- Image number 477367142- "Celebrity Sightings in Los Angeles – June 16, 2015," Taylor Swift, Selena Gomez [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/taylor-swift-and-selena-gomez-are-seen-in-hollywood-on-june-news-photo/477367142)

- Image number 477369866- "Celebrity Sightings in Los Angeles – June 16, 2015," Khloe Kardashian [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/khloe-kardashian-is-seen-in-beverly-hills-on-june-16-2015-news-photo/477369866)

- Image number 474158638 and 474158652- "Celebrity Sightings in Los Angeles – May 20, 2015," Justin Bieber, Jayde Pierce [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/justin-bieber-and-jayde-pierce-are-seen-on-may-20-2015-in-news-photo/474158638)

  (http://www.gettyimages.com/detail/news-photo/justin-bieber-and-jayde-pierce-are-seen-on-may-20-2015-in-news-photo/474158652)

- Image 474158660- "Celebrity Sightings in Los Angeles – May 20, 2015," LeAnn Rimes [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/leann-rimes-is-seen-on-may-20-2015-in-los-angeles-news-photo/474158660)

- Image 475658198- "Celebrity Sightings in Los Angeles – June 2, 2015," Reese Witherspoon [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/reese-witherspoon-is-seen-on-june-02-2015-in-los-angeles-news-photo/475658198)

- Image 476479272- "Celebrity Sightings in Los Angeles – June 9, 2015," Kim Kardashian [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/kim-kardashian-is-seen-in-beverly-hills-on-june-09-2015-in-news-photo/476479272)

- Images 475031312 and 475031324- "Celebrity Sightings in Los Angeles – May 28, 2015," Kylie Jenner [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/kylie-jenner-is-seen-on-may-28-2015-in-los-angeles-news-photo/475031312)

(http://www.gettyimages.com/detail/news-photo/kylie-jenner-is-seen-on-may-28-2015-in-los-angeles-news-photo/475031324)

- Images 475014130 and 475014122- "Celebrity Sightings in Los Angeles – May 28, 2015," Kim Kardashian, North West [improperly credited to Bauer-Griffin, GC Images]

  (http://www.gettyimages.com/detail/news-photo/kim-kardashian-and-north-west-are-seen-in-los-angeles-on-news-photo/475014130)

  (http://www.gettyimages.com/detail/news-photo/kim-kardashian-and-north-west-are-seen-in-los-angeles-on-news-photo/475014122)

16. Moreover, Getty and Bauer-Griffin have willfully infringed BFRA's copyrights by issuing sham licenses to third parties who reproduce, distribute, and publically display unlawful copies of the Celebrity Photographs, without permission, consent, or license. Some of these sham licenses were issued to major media outlets, such as *US Magazine*, *People,* and *Elle*.

17. In short, the Celebrity Photographs, which belong to BFRA, have been illicitly licensed to major media outlets without authorization of or payment to BRFA, thereby causing substantial economic harm to BFRA, who has not only lost the revenue to which it would have been entitled for licensing said Celebrity Photographs, but has also lost its exclusive right to control and carefully monitor the licensing thereof.

18. As a result of distributing, uploading, reproducing, and publically displaying the sought after photographs, like the Celebrity Photographs, on its website, Getty Images and Bauer-Griffin have received ill-gotten sham license payments from third parties and have also illicitly enhanced their reputations for delivery of high-quality, in-demand celebrity photographs and generated more traffic to their sites, resulting in further ill-gotten commercial advantage.

19. Getty Images and Bauer-Griffin have also caused tremendous harm to Plaintiff. Among other things, Defendants charged below-market rates for their images in order to obtain market control, a practice that damages the long-term value of these photographs and all of Plaintiff's images, since Plaintiff's clients see that they can license

the same works from Getty and Bauer-Griffin for less. Plaintiff's photographers who witnessed the infringement were falsely led to believe that Plaintiff was not protecting their interests. And Plaintiff lost credibility with its clients who thought Plaintiff was offering the same images as Getty and Bauer-Griffin illegally.

20. On information and belief, Getty and Bauer-Griffin knew full well that they did not have the appropriate rights to the Celebrity Photographs and that the proper Copyright Management Information ("CMI") provided on the Getty Images Website in association with the Celebrity Photographs had been removed and falsified.

21. Among other things, Getty and Bauer-Griffin are both highly sophisticated licensors of celebrity photographs and have full knowledge of the strictures of copyright law and the requirements for the appropriate acquisition of rights to such works. Even the most cursory due diligence by Getty and Bauer-Griffin would have revealed that the Celebrity Photographs were owned by BFRA/X17 and that, therefore, Getty and Bauer-Griffin did not have the right to reproduce, distribute, publicly display and license them without permission. Specifically, the Celebrity Photographs are well-known and have been licensed to other media outlets around the world with the correct ownership information attached. Indeed, the correct ownership information is readily available online.

22. In addition, the misappropriated Celebrity Photographs had a huge red-flag that would alert any observer—especially ones as steeped in the licensing world as Getty and Bauer-Griffin—that they contain falsified incorrect authorship and ownership (i.e., Copyright Management Information) details. To wit, none of the Celebrity Photographs lists the photographer's name. Yet Getty and Bauer-Griffin's (and, indeed, the industry's) consistent business practice is to credit the owner ***and*** the photographer for each photo uploaded on and licensed through the Getty Images website. However, the Celebrity Photographs credited only Bauer-Griffin as the owner and failed entirely to cite to any photographer information. Such a sharp deviation from Getty and Bauer-Grffin's ordinary attribution practices signifies that the Defendants either had knowledge that had not secured appropriate rights to the Celebrity Photographs or that they acted with red-flag knowledge

thereof or in reckless indifference thereto. Because Getty and Bauer-Griffin did not have, or at least chose not to post, photographer information associated with the Celebrity Photographs, it is apparent that they, at best, failed to investigate the chain of title associated with the photographs. On information and belief, such a failure evidences at least a reckless disregard for BFRA's copyrights and the CMI contained therein.

23. On September 1, 2015, BFRA, by and through its attorneys, sent Getty a demand letter in an attempt to resolve this dispute pre-litigation. Getty was not cooperative and did not respond to BFRA's demand in any meaningful way. BFRA therefore has no alterative but to file suit to seek redress to protect its basic intellectual property rights.

FIRST CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501 Against all Defendants)

24. BFRA incorporates hereby reference the allegations in paragraphs 1 through 23 above.

25. BFRA is the owner of all rights, title, and interest in the copyrights of the Celebrity Photographs that frame this dispute, which substantially consist of material wholly original and which are copyrightable subject matter under the laws of the United States.

26. The Celebrity Photographs have been registered with the United States Copyright Office.

27. Defendants have directly, vicariously, contributorily and/or by inducement willfully infringed BFRA's copyrights by reproducing, displaying, distributing, and utilizing the Photos for purposes of trade violation of 17 U.S.C. § 501 *et seq.*

28. All of the Defendants' acts are and were performed without permission, license, or consent of BFRA.

29. BFRA has identified at least 12 instances of infringement by way of unlawful reproduction and display of BFRA's photographs (as well as the unlawful facilitation of other's reproduction of its photographs). This is likely only the tip of the proverbial

iceberg and, if and when other infringements are determined and discovered in this case, BFRA expressly reserves the right to amend the pleadings to include additional acts of infringement as needed.

30. As a result of the acts of Defendants alleged herein, BFRA has suffered substantial economic damage.

31. Defendants have willfully infringed, and unless enjoined, will continue to infringe BFRA's copyrights by knowingly reproducing, displaying, distributing, and utilizing its photographs by, among other things, virtue of Defendants' issuance of sham licenses that, among other things, encourages other media outlets and people to infringe BFRA's copyrights.

32. The wrongful acts of Defendants have caused, and are causing, injury to BFRA, which cannot be accurately computed, and unless this Court restrains Defendants from further commission of said acts, BFRA will suffer irreparable injury, for all of which it is without an adequate remedy at law. Accordingly, BFRA seeks a declaration that Defendants are infringing BFRA's copyrights and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement.

33. The above-documented infringements alone would entitle BFRA to a potential award of up to $1,800,000 in statutory damages for the at-least 12 infringed photographs, in addition to its attorney's fees.

SECOND CLAIM FOR RELIEF

(Falsification, Removal and Alteration of Copyright Management Information, 17 U.S.C. § 1202 Against Bauer-Griffin)

34. BFRA incorporates hereby reference the allegations in paragraphs 1 through 33 above.

35. Each of the Celebrity Photographs contained information regarding the author and copyright owner of the work, including such information embedded as IPTC (International Press Telecommunication Council) Metadata, and the name of, and other

identifying information about, the author of the work and the copyright owner of the work that constitutes "copyright management information" as defined under 17 U.S.C. § 1202(c)(2) & (3).

36. As illustrated by Exhibit B and detailed *supra*, in conjunction with their public display of and offer of license to the Celebrity Photographs, Getty has falsely listed "Bauer-Griffin" as the owner of the photograph and has omitted the name of the photographer. On information and belief, Bauer Griffin knowingly provided this false copyright management information to Getty and Getty posted the false copyright management information despite having full knowledge that the authorship and photographer credits are false.

37. As such, Plaintiff is informed and believes and on that basis alleges that Bauer-Griffin knowingly, and without authority of BFRA or the law, and with the intent to induce, enable, facilitate and/or conceal infringement of Plaintiff's copyright, falsified and/or caused or induced others to falsify copyright management information by providing copyright management information that is false and/or by distributing or importing for distribution copyright management information that is false, in violation of 17 U.S.C. § 1202(a)(1) &(2). Among other things, this false information has induced, enabled, facilitated and/or concealed infringement of the copyrights to the Celebrity Photographs by entities, including but not limited to *US Magazine*, *People*, and *Elle* and, most likely, countless other major media outlets, granted sham licenses to the Celebrity Photographs by Getty and Bauer-Griffin.

38. Plaintiff is informed and believes and on that basis alleges that Bauer-Griffin, without the authority of BFRA or the law, intentionally removed and/or altered the copyright management information for the Celebrity Photographs, distributed or imported for distribution copyright management information knowing that the management information had been removed or altered without the authority of BFRA or the law, and/or distributed, imported for distribution works or copies of works knowing that the copyright management had been removed or altered without authority of BFRA or the law, all while knowing or having reasonable grounds to know that it would induce, enable, facilitate or

conceal infringement, in violation of 17 U.S.C. § 1202(b)(1), (2) & (3). Among other things, this removed and altered information has induced, enabled, facilitated and/or concealed infringement of the copyrights to the Celebrity Photographs by entities, including but not limited to *US Magazine*, *People,* and *Elle* and, most likely, countless other major media outlets, granted sham licenses to the Celebrity Photographs by Getty and Bauer-Griffin.

39. Bauer-Griffin's falsification, removal and alteration of copyright management information of the Celebrity Photographs and subsequent distribution of the Photo with said falsified, removed and altered copyright management information was and is willful and intentional, and was and is executed with full knowledge of Plaintiff's rights under copyright law, and in disregard of Plaintiff's rights.

40. BFRA is entitled to recover its actual damages suffered as a result of the violation and any profits of Defendants attributable to the violation and not taken into account in computing actual damages, or, at Plaintiff's election, statutory damages pursuant to 17 U.S.C. § 1203(c), of up to $25,000 per act of falsification, removal and/or alteration.

41. BFRA is entitled to recover costs and attorneys' fees from Bauer-Griffin pursuant to 17 U.S.C. § 1203(b)(4) and (5).

42. Bauer-Griffin's violation of 17 U.S.C. § 1202(a) has caused, and, unless restrained by this Court, will continue to cause, irreparable injury to Plaintiff not fully compensable in monetary damages. Under to 17 U.S.C. § 1202(a), Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendants from further such violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. The Defendants, and their officers, agents, servants, employees, and representatives, and all persons in active concert or participation with them, be permanently enjoined from copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all Photos of BFRA;

2. The Court enter a seizure order directing the U.S. Marshall to seize and impound all items possessed, owned or under the control of Defendants, their officers, agents, servants, employees, representatives and attorneys, and all persons in active concert or participation with them, which infringe upon Plaintiff BRFA's copyrights, including but not limited to any and all broadcasting materials, advertising materials, print media, signs, Internet web sites, domain names, computer hard drives, servers or any other media, either now known or hereafter devised, bearing any design or mark which infringe, contributorily infringe, or vicariously infringe upon Plaintiff BFRA's copyrights in the Photos as well as all business records related thereto, including, but not limited to, lists of advertisers, clients, customers, viewers, distributors, invoices, catalogs, and the like;

3. An accounting be made for all profits, income, receipts or other benefit derived by Defendants from the unlawful reproduction, copying, display, promotion, distribution, or sale of products and services, or other media, either now known or hereafter devised, that improperly or unlawfully infringes upon Plaintiff's copyrights pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);

4. Actual damages and disgorgement of all profits derived by Defendants from their acts of copyright infringement and copyright management information falsification, removal, and alteration to reimburse plaintiff for all damages suffered by it by reasons of Defendants' acts, under 17 U.S.C. §§ 504 (a)(1) & (b) and 1203(c)(2);

5. Statutory damages for copyright infringement, including willful infringement, and copyright management information falsification, removal, and alteration in accordance with 17 U.S.C. §§ 504(a)(2) & (c) and § 1203(c)(3));

6. Reasonable attorneys' fees incurred herein pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b)(5);

6. Costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) & (b), 17 U.S.C. § 505, and 17 U.S.C. § 1203(b)(4); and

7. Plaintiff be awarded any such other and further relief as the Court may deem just and appropriate.

Dated: March 10, 2016

ONE LLP

By: /s/ John Tehranian
John Tehranian
Joanna Ardalan
Attorneys for Plaintiff,
B.F.R.A. Investment LLC

DEMAND FOR JURY TRIAL

Plaintiff B.F.R.A. Investment LLC hereby demands trial by jury of all issues so triable under the law.

Dated: March 10, 2016

ONE LLP

By: /s/ John Tehranian
John Tehranian
Joanna Ardalan
Attorneys for Plaintiff,
B.F.R.A. Investment LLC